

ORIGINAL

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United States District Court
For The
Middle District of Pennsylvania

Randy Alan Starner

v.

No: 01-CV-757

Dr. Daniels, Prison Physician;
Helen Sneed, Deputy Warden
of Treatment; Earl Reitz, Warden,
Cumberland County Prison;
Richard Rovegno, Commissioner
Cumberland County and
Cumberland County

(William W. Caldwell
J.

FILED
HARRISBURG

OCT 10 2001

MARY E. D'ANDREA, CLERK

Per 9/18
DEPUTY CLERK

Title 42 U.S.C.A. § 1983

Brief In Support of
Motion for Denial of
Defense Counsel's
Motion to Dismiss Plaintiff's Complaint

Foulkrod Ellis P.C.

Defense counsel for;

Michael O. Daniels, M.D.

Argues that:

- 1.) Plaintiff fails to state a claim upon which relief can be granted;
- 2.) Plaintiff can prove no set of facts which would grant him relief;

3.) Plaintiff's complaint focuses solely on Dr. Daniels' medical judgment in prescribing conservative therapy prior to surgical intervention;

4.) Defense counsel claims that Plaintiff's complaint does not make out a cause of action under the Eighth and Fourteenth Amendments.

Plaintiff argues:

That Plaintiff's claims are based on a wider view of Dr. Daniels'

actions pertaining to this, Title 42
U.S.C.A § 1983; Civil Rights Action, be-
fore The Honorable Court.

Said actions of Dr. Daniels are:

1.) Delay in providing Medi-
cal Treatment; See, Handwritten ad-
dendum to complaint, pages "4 thru 16"
"Log of; Dates of events, and time table
of number of days between each event,"

2.) Providing medical treat-
ment on Plaintiff's behalf;

(a.) Delaying medical treatment, see, handwritten addendum to plaintiff's complaint; pages "4 thru 16", "Log of; Dates of events and time table of number of days between each event."

(b.) Ignoring information provided by; Nerve Conduction Studies and Report, Electrodiagnostic examination supports plaintiff's claim of inadequate medical treatment, equal to no medical treatment; See, Nerve Conduction Studies and Report.
(Exhibit-A)

3.) DR. Daniels, by his own, "Omission", REFUSED plaintiff medical treatment, "I quote, I'm not going to do anything for you" SEE, Handwritten addendum to plaintiff's complaint, pages 7, 8; FEBRUARY 23, 2001.

4.) DR. Daniels ignoring, "NERVE Conduction Studies and Report," which corroborate plaintiff's claims;

(A.) The M-Response is significantly depressed in amplitude, 2200 μ V, "normal, 7000 to 10,000 μ V."

(B.) The distal evoked response for the Median Nerve recorded over the Opponens Pollicis is markedly delayed in onset to 8.0 ms, "normal, less than 4.0 ms."

(C.) No distal Median Nerve sensory response could be obtained over the flexor skin of the second finger.

(D.) Distal Median Nerve Conduction obtained on the left side by the same technique, "Borderline Normal."

(E.) Right, Medial Motor Wrist,
amplitude 2200.0 μ V, "Normal 7000 to
10,000 μ V."

(F.) Right, Median Sensor
Wrist, was unobtainable,

(G.) Right, Oppon Pollicis,
75 % abnormal.

Confirming results, support-
ing cognizable claim sufficiently harm-
ful to evidence deliberate indifference
to serious medical needs.

It is only such indifference that can offend "evolving standards of decency" of the Eighth Amendment.
(Exhibit - A)

5.) Dr. Daniels authorized a Cock-Up Wrist Brace that was, "altered" not in proper form, "shape"; therefore, brace is not performing medically, as it was designed to accomplish, "Cock-Up Stay" original stay that lifts and holds wrist and hand in an elevated extended position to alleviate the "pinch point" has been removed,

REplaced with tongue depressors,
allowing wrist and hand to move in any
direction, not stabilizing wrist and hand
form dropping, thus allowing the sheath
to be crimped and creating a pinch point.
See, Exhibit - E, Family Home Health Care
Products, Inc., Explaining the functions
of a Cock-Up Wrist Brace. Explaining
what Carpal Tunnel is and the consequences
when ignore for too long, also how to correct
the progression of nerve damage.
(Also See, Exhibits B, C)

Exhibit-B, Right-Cock-Up
Wrist Brace that is altered, Medically
unsound.

Exhibit-C, Left-Cock-Up
Wrist Brace from plaintiff's home re-
sidence, had prior operation on left
wrist. Left, Cock-Up wrist brace is for
comparison, in relation to Right Cock-
Up wrist brace, as to proper form, "shape"

In determining whether to grant a Motion to Dismiss, the court must accept "as true the facts alleged in the Complaint and all reasonable inferences that can be drawn from them.

(Unger v. National Residence Matching Program, 928 F.2d 1392, 1394-95 (3d Cir. 1991)).

Futhermore:

He must then ask whether, accepting all those facts, there is any

possibility that Plaintiff can be entitled to any form of relief. If any of the facts stated in plaintiff's complaint might qualify plaintiff for any form of COURT action under section 1983 then the Judge is legally required to deny the prison officials Motion to Dismiss Plaintiff's Complaint.

The United States Supreme Court has stated this test very strongly in two cases involving PRISONER'S suits under section 1983.

(CRUZ V. Beto, 405 U.S. 319 (1972);
Haines V. KERNER, 404 U.S. 519 (1972))

In CRUZ, the court said that a complaint "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (405 U.S. at 332, quoting from, Conley V. Gibson, 335 U.S. 41, 45-46 (1957)). In Haines, the court added that in considering a Motion to Dismiss, a Pro Se complaint,

(one submitted by the plaintiff for himself, without a lawyer) should be held to "less stringent standards than the formal pleadings drafted by lawyers." (404 U.S. at 520).

As for Plaintiff not stating a claim upon which relief can be granted.

Plaintiff claims;

1.) Dr. Daniels refused to provide plaintiff with adequate medical care

2.) DR. Daniels refused to provide plaintiff medical treatment,

3.) DR. Daniels in refusing the plaintiff medical treatment violated Plaintiff's Rights under the Eighth Amendment of the Constitution prohibiting CRUEL and unusual punishment

4.) DR. Daniels, in refusing plaintiff medical treatment, violates the Eighth Amendment of the Constitution prohibiting CRUEL and unusual punishment, therefore, also violates

the Plaintiff's rights under the Fourteenth Amendment, "Due Process Clause".

5. DR. Daniels was and is "Deliberately Indifferent" to plaintiff's serious medical needs.

As to Defense Counsel arguing that plaintiff has not alleged Deliberate Indifference to his serious medical needs. See, page 2 of handwritten addendum to plaintiff's complaint; (I am accusing DR. Daniels of violating

"among other things" ④ Deliberate Indifference.).

In order to state a valid Eighth Amendment claim for denial of medical care, a plaintiff must allege that

1.) the defendant exercised deliberate indifference and that 2.) the prisoner's medical needs were serious, and that 3.) Plaintiff must allege acts or omissions sufficiently harmful to evidence deliberate indifference to his serious medical needs.

On FEBRUARY 23, 2001, DR. Daniels explicitly stated I quote "I'm not going to do anything for you." "Omission" Definition of, explicitly; to make clear or explicit, (something obscure or implied); Definition of not; word expressing the idea of no.

THEREFORE:

Title 42 U.S.C.A. § 1983; Note 72
While mere inadvertence or negligence on the part of prison officials cannot support a prisoner's civil rights

action raising U.S.C.A. Const.
Amend. 8 issues, deliberate indifference
Regardless of how evidenced, either by
actual or recklessness, will provide a
sufficient foundation.

(Little v. Walker, C.A. Ill. 1977, 552
F.2d 193).

Also 42 U.S.C.A. § 1983; Note 693;

Within context of prisoner's
civil rights action against prison offi-
cials to recover for officials alleged

"deliberate deprivation" of prisoner's Constitutional Rights, term "deliberate deprivation" denotes two species of culpability, "actual intent" and "recklessness"; "actual intent" encompasses both the special intent to deprive prisoner of Constitutional Right and "recklessness" comprehends objective standards or whether officials conduct is with such disregard of prisoner's clearly established Constitutional Rights that the action can not be reasonably characterized as being in good faith.

(Little v. Walker, C.A. Ill. 1977, 552 F.2d 193.)

Defense counsel argues as to the
SERIOUSNESS of PRISONER'S medical needs;

On January 22, 2001, Electrodiagnostic Studies were performed by Dr. Craig J. Jurgensen, Neurologist. While performing said studies, Dr. Jurgensen stated that there is significant loss of nerve function, (Nerve Conduction Studies and Report will reveal plaintiff's serious medical need. "Exhibit-A" Mr. Jurgensen then explained operation that would correct, Carpal Tunnel Syndrome.

Therefore:

One should believe that an operation that is explained to the plaintiff, a correctible progressive disease, "Carpal Tunnel Syndrome" by way of said operation is considered a serious medical need. A reasonable person would believe that any time an operation is needed to correct a medical condition, that condition is "SERIOUS".

On 12.4.00, Plaintiff's hand and fingers were examined.

On 1.22.01, 49 days later, (emphasis added) electrodiagnostic studies were performed,

On 2.26.01, 35 days later (emphasis added) plaintiff was given Cock-Up wrist brace, (without cock-up stay in place).

On 2.28.01, Dr. Daniels advised plaintiff that conservative treatment was recommended before surgery. (Dr. Daniels advised plaintiff concerning treatment, 5 day after stating,

I quote, "I'm not going to do any-
thing for you." "EMPHASIS ADDED"

On 3-7-01, 9 days after receiving
brace DR. Woods (Alternate Prison
Physician) stated that I quote, "This
is no good, there is no support, stay
is not in it." (Cock-Up Wrist Support
another brace was ORDERED.

On 3-17-01; 10 days later, new
brace arrives, new brace the same as
prior brace, also, Cock-Up stay remov-
ed (emphasis added).

On 3.19.01; Went to medical department pertaining to new brace, once again brace taken back, because of no Cock-Up wrist stay. (Emphasis added)

On 3.23.01, 4 days later, brace returned to plaintiff, tongue depressors sewn into area where original support (Cock-Up Wrist Stay) belongs, Cock-Up wrist brace not in proper form, "shape," medically unsound, "altered."

Defense counsel's inference that plaintiff's complaint arises from negligence, as to Dr. Daniels' actions; When plaintiff described Dr. Daniels actions as negligence, it was in the way of informal letter to Mr. Reitz, Warden; Mrs. Helen Sneed, Deputy Warden of Treatment and Dr. Daniels. Plaintiff was notifying administration as to issues pertaining to Dr. Daniels' actions.

Plaintiff was not addressing District Court and therefore, the proper language, "Dr. Daniels is, "Deliberately Indifferent" to my "Serious Medical

Needs", for doing such was not used. (Ex-F;G)

Conclusion

The Constitution of the United States guarantees that my Civil Rights can not be transgressed upon, at the same time the Constitution guarantees that the transgressor shall be brought before the courts of the United States for proper redress.

DR. Daniels, Title 42 U.S.C.A. § 1983,
Note 344; Color of Law:

Where physician who examined
PRISONER at county Jail was acting in
his official capacity as a county health
officer in treating the PRISONER, the tr
ment was "State Action" within mean
ing of this section and the physician wa
not immune from suit under the act

(Robinson v. Jordan, C.A. Tex. 1974,
494 F.2d 793)

Defense counsel argues that;

The common thread throughout plaintiff's complaint is that plaintiff's disagreement about an informed medical judgment, and does not make out a cause of action under the Eighth and Fourteenth Amendments.

In Response; The backbone of plaintiff's complaint, are the actions of Dr. Daniels Prison Medical Department and Prison Administration.

In Defense counsel's BRIEF in Support of Motion to Dismiss, DR. Daniels is inferred to as an informed individual, "Definition of 'Informed'" "In the text defense counsel conveys;" "Knowledge." (Emphasis Added)

A. That being an; "Informed Medical Judgment", why was information confirming the SERIOUSNESS and advanced progress of plaintiff's Carpal Tunnel Syndrome, "Ignored"? (Ex-A)

B.) Inadequate, "Cock-Up Wrist
BRACE, BRACES. (EX-B, C)

C.) Inadequate, Medical Treatment

D.) "Omission", by Dr. Daniels;
Refusing Plaintiff medical treatment

E.) Delaying, Medical Treatment

These (A. thru E.) are the "GRIEVANCES"
of Plaintiff's Complaint. They are and
need to be addressed properly in
United States District Court,

This is a Title 42 U.S.C.A. § 1983; Civil Rights Action; The issues are pertaining to; Ignoring, Inadequate, Omissions, Delaying; all issues of Medical, arising a Constitutional Eighth Amendment violation.

THERE ARE many issues involved concerning Plaintiff's Complaint. It would be unjust to the Plaintiff in granting Defence Counsel's, Motion to Dismiss Plaintiff's Complaint, for there are still factfinders to be heard and seen through Testimony

and Physical Evidence.

Therefore, Defense Counsel claims that Plaintiff's Complaint does not make out a cause of action under the Eighth Amendment. The many issues pertaining to this, Title 42 U.S.C.A. § 1983; Civil Action, proves otherwise.

Accordingly, Defense Counsel's Motion to have Plaintiff's Constitutional claims against Dr. Daniels Dismissed, may be Denied and Dismissed.

FURTHERMORE: Defense Counsel's Motion to have Plaintiff's Complaint Remanded to Cumberland County Court of Common Pleas for disposition, Must be Denied and Dismissed.

Respectfully Submitted,

Randy Alan STARNER
Cumberland County Prison
1101 Claremont Road
Carlisle, Pa. 17013

October 4th, 2001 By: Randy Alan Starnes
Date

PRO SE

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For The
Middle District of Pennsylvania

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Certificate of Service

I hereby certify that service of a true and correct copy of the enclosed, Plaintiff's Brief In Support of Motion for Denial of Defense Counsel's Motion to Dismiss Plaintiff's Complaint was sent to counsel of record this 4th day of October, 2001 by first class mail.

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